IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No. 16 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS. JUSTICE R.M.DOSHIT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Applicant(s)

Versus

KAMAL KHANDSARI WORKS - Respondent(s)

==========

Appearance :
MR VM PANCHOLI, AGP for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,
==========

CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 01/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

This Reference made by the Gujarat Sales Tax Tribunal (hereinafter referred to as, **"the Tribunal"**) under Section 69 of the Gujarat Sales Tax Act, 1969

(hereinafter referred to as, **“the Act”**) arises from the common judgment and order dated 30th December, 1988 passed by the Tribunal in Second Appeal Nos.59/1986, 101/1986 and 167/1986 to the extent the Second Appeal No.59/1986 has been allowed.

Pursuant to the application made by the Revenue, the following question has been referred for our decision :-

> **“Whether on the facts and in the circumstances of the case the decision of the Tribunal arrived at regarding interpretation of letter dated 29/3/82 and Resolution dated 5/11/81 is perverse or not and whether the Tribunal was justified in law in partially allowing the Second Appeal of opponent and ordering that opponent shall pay interest only on 50% of the unpaid purchase tax from the date when the amount ought to be deposited in the Government Treasury under section 47(2) of the Gujarat Sales Tax Act, 1969 read with rule 31(1) of the Rules till the actual date of payment ?”**

The facts leading to the present Reference are as under :-

The respondent M/s Kamal Khandsari Works (hereinafter referred to as, **“the dealer”**) was registered

as a dealer under the Act. The dealer was the manufacturer of Khandsari (Molasses) as a village industry. For the purpose of producing Khandsari it purchased sugarcane. The purchases of sugarcane was taxable under Section 18 of the Act. However, under entry 82 of the Schedule to the Government Notification issued under Section 49(2) of the Act, part of the tax on purchases of sugarcane by a dealer in the manufacture of Khandsari in a village industry was made exempt. By later amendment made in the year 1979 whole of such tax was made exempt with effect from 1st April, 1979. The said entry 82 came to be deleted by Government Notification dated 18th February, 1981 with effect from 18th February, 1981. Thus, the purchases of the sugarcane which were hitherto exempt from payment of purchase tax, on and from 18th February, 1981, became taxable under Section 18 of the Act. Such tax was payable @ 8 per cent.

It appears that the concerned Notification had not been noticed by several producers of Khandsari, and as a result, they did not pass over such tax to their buyers. Nevertheless, they were required to pay tax on the purchases of the sugarcane as aforesaid. Upon representation made by such manufacturers, the State

Government, by its order dated 5th November, 1981 decided **"to remit in exercise of the powers vested under section 55 of the Act, the liability to pay the purchase tax for the period from 18-2-1981 to 28-2-1981. In case however any khandsari unit had paid the purchase tax in Government Treasury along with the returns, the amount of purchase tax so paid is not to be refunded**." By its Circular dated 8th July, 1982 the State Government made a further concession in connection with the interest payable on tax on purchases of the sugarcane made by the Khandsari manufacturers for the period from 1st March, 1981 to 31st May, 1981. It was decided that no interest should be recovered on the amount of such tax; on conditions that, the concerned dealer paid upto 50% but not less than 25% of such taxes by 31st March, 1982 and paid the remainder of the amount by 30th June, 1982.

It is the aforesaid order dated 5th November, 1981 and the Circular dated 8th July, 1982 which have been referred to us for their correct interpretation.

The subject matter of dispute is the Samvat Year 2037, the accounting year commencing from 8th November, 1980 and ending on 27th October, 1981. As recorded

hereinabove, the tax on purchases of sugarcane which was hitherto exempt from payment of tax was made taxable with effect from 18th February, 1981. A manufacturer was thus required to pay tax on purchases of sugarcane since 18th February, 1981. For failure to pay such tax he would be liable to pay interest as specified in Section 47(4A) of the Act.

The dealer claimed refund of tax paid on purchases of sugarcane made during the period from 18th February, 1981 to 28th February, 1981. He also claimed that in view of the Government Circular dated 8th July, 1982 he was not liable to pay interest on unpaid taxes on purchases of sugarcane made from 1st March, 1981 to 31st May, 1981. The Sales Tax Officer held that the dealer was not entitled to refund of the tax paid on purchases of sugarcane made from 18th February, 1981 to 28th February, 1981. The dealer had, though paid 50% of the tax on purchases of sugarcane made for the period from 1st March, 1981 to 31st May, 1981 on 31st March, 1982, he did not pay the remaining 50% of such tax on 30th June, 1982. He, therefore, was required to pay interest on the whole of the unpaid taxes from the date the tax ought to have been paid under Section 47(2) of the Act till the date of payment. Feeling aggrieved,

the dealer preferred appeal before the appellate authority.

Before the appellate authority he challenged the recovery of interest on tax on purchase of sugarcane made during the period from 1st March, 1981 to 31st May, 1981. The appellate authority rejected the appeal. Feeling aggrieved, the dealer preferred the above referred Second Appeal No.59/1986 before the Tribunal.

Before the Tribunal it was submitted that by the Circular dated 8th July, 1982, the State Government had extended the period for payment of 25% of tax upto 31st March, 1982, and for the remaining amount of tax upto 30th June, 1982. Hence, the interest shall not be recovered for the period prior to 31st March, 1982 in so far as 25% of the tax was concerned, and for the remaining amount of the tax such interest should not be recovered until 30th June, 1982. In other words, the interest shall be made payable on the whole of the unpaid taxes from 1st July, 1982. In the event, a manufacturer had not paid 25% of the unpaid taxes on 31st March, 1982, such amount of taxes shall attract interest from 1st April, 1982 upto 30th June, 1982 also. The Tribunal did not accept the proposition

and held that the dealer was liable to pay interest on 50% of the taxes which remained unpaid after 30th June, 1982 for whole of the period i.e. from the date such taxes became payable till the same were paid. The Tribunal also directed that the taxes paid by the dealer on purchase of sugarcane for the period from 18th February, 1981 to 28th February, 1981 shall be refunded to him.

It is these directions which are subject matter of challenge before us. Mr.Pancholi has submitted that the Government Order dated 5th November, 1981 clearly specified that the taxes already paid shall not be refunded. In the present case, the dealer had paid the taxes on purchases of sugarcane. The dealer was, therefore, not entitled to refund of such taxes.

As to the interest, Mr.Pancholi has submitted that considering the hardship suffered by the dealers, the Government had, by its Circular dated 8th July, 1982, offered certain concessions in connection with the interest payable on unpaid taxes, on the conditions specified therein. He has submitted that the conditions imposed were composite i.e. both the conditions were

supplementary to each other and the benefit could be claimed only in case both the conditions were complied with.

We do agree with Mr.Pancholi. The remission in connection with the tax payable on purchases of sugarcane for the period from 18th February, 1981 to 28th February, 1981 was made with a view to mitigating the hardship that may be suffered by the manufacturers. If any manufacturer had passed over the tax to its buyers and had paid the taxes to the State Government, such taxes were not intended to be refunded to the concerned manufacturer. In the present case, it is evident that the dealer had paid such taxes along with his return. He was, therefore, not entitled to the refund of such taxes. Moreover, the dealer did not claim such refund before the appellate authority nor was such claim made before the Tribunal either. In our view, the Tribunal has manifestly erred in ordering refund of the purchase tax paid by the dealer for the period from 18th February, 1981 to 28th February, 1981. We hold that the dealer was not entitled to refund of the said amount.

As to the concession granted with respect to the

interest payable under Section 47(4A) of the Act, we are of the opinion that such concession was offered by Government Circular dated 8th July, 1982 on two conditions referred to hereinabove. Both of which were mandatory. In other words, to avail of the said benefit a manufacturer was required to fulfill both the conditions. Though the said Circular did not provide for consequences of non-compliance of any of the two conditions, there is no scope for reading a partial concession as has been done by the Tribunal. In the present case, admittedly the dealer did pay 50% of the unpaid taxes on 31st March, 1982 but the dealer failed to pay the remaining 50% of the unpaid taxes on or before 30th June, 1982. The dealer thus failed to comply with the conditions mentioned in the Circular dated 8th July, 1982. Consequently, the dealer forfeited its right to concession in payment of interest offered by the said Circular. In our view, therefore, the dealer was not entitled to concession with respect to the interest payable under Section 47(4A) of the Act. We are of the opinion that the Tribunal has erred in directing the dealer to pay interest on 50% of the unpaid purchase tax. The dealer was liable to pay interest on the entire amount of the unpaid purchase tax from the date on which such amount ought to have been deposited in the

Government Treasury under Section 47(2) of the Act read with Rule 31(1) of the Rules till the actual dates of payment.

In view of the above discussion, we answer the Reference in the affirmative in favour of the Revenue and against the dealer-assessee.

(Anil R.Dave, J.) **(Ms. R.M.Doshit, J.)**

/moin